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SINCE the REVIEW is now publishing articles on what are perhaps exciting public questions, it seems wise to remind its readers of the continued custom of the REVIEW to have no policy in such matters. It accepts for publication any article on a question of law which is satisfactory in form and which its editor deems a material addition to the subject discussed, regardless of the source from which the article may come, or the results which might follow from the adoption of its contentions.

THE LAW SCHOOL. — The Law School as usual opened with a number of changes in the curriculum, the continued absence of Professor Strobel, and the departure of Assistant Professor Westengard for Siam, having made considerable rearrangement necessary. Professor Beale will give the course in Property II., and this course, with Conflict of Laws, he will complete in April, going to Chicago for the last quarter of the term. Professor Wambaugh has taken Property I., and will discontinue for this year his course on Quasi-Contracts. The work in the second year course on Jurisprudence and Procedure in Equity, shared last year by Professor Beale, will be this year entirely undertaken by Dean Ames, and the Dean's place in third year Equity will be filled by Mr. Wallace B. Donham, LL.B., 1901. The case book used will be Dean Ames' second volume of Equity Cases, which is now in course of preparation. A new book is also to be used in first year Contracts, Professor Williston having now completed the first volume of his new cases on that subject, there being a second to follow. The course will be given to two sections of the class by Professor Williston and Assistant Professor Wyman. In addition to his courses on Evidence and Constitutional Law, Professor Gray assumes again his former course in third year Property, and Mr. Frederick Green, LL.B., 1893, whose father,

Mr. Nicholas St. John Green, lectured on Torts and Criminal Law in the Law School in the early seventies, will undertake the course in Admiralty. A new course, treating of The Administration of Law by Public Officers, is announced as an extra course, by Assistant Professor Wyman.

The enrollment in the school on October fifteenth was considerably greater than at the same time last year. Complete statistics will, as usual, appear in the December number.

IMPLIED PROMISE NOT TO PREVENT PERFORMANCE OF A CONTRACT. — Where under the terms of a contract performance on the one side is to be given in exchange for performance on the other, one contracting party is under no legal duty to perform where the other party has not performed or is not ready to perform, according to the terms of the agreement. This principle, formerly expressed in terms of implied conditions,[1] is accepted law in every case where the part unperformed by the plaintiff goes to the essence of the contract.[2]

When one party to a contract prevents the other from performing his part, the latter therefore has no remedy under the express contract. It is true that full performance of the plaintiff's promise may be waived by the defendant, but evidently an intention to waive performance is not shown by an act preventing the other party from furnishing a substantial part of the *quid pro quo*. The intention is rather to repudiate the contract. If a waiver is implied, the party at fault is forced to perform without receiving the *quid pro quo*, or to suffer damages if he refuses to perform which must be measured by the value of the promise which it was his legal duty to perform. To secure justice, therefore, by holding the defendant liable for the loss the plaintiff has sustained, a promise not to prevent performance is implied, the damages for breach of which are the value of the contract to the plaintiff.[3] Formerly, where prevention of performance was the cause of action, and the breach declared on was of the express promise, the plaintiff's case was dismissed.[4] In more modern times the pleading is not required to be so accurate, and thus the distinction between breach of the express and of the implied promise is not always kept in mind.[5]

In a recent Massachusetts case the failure of the court to mark the distinction just referred to resulted in the dismissal of the plaintiff's action. A fraternal beneficiary association passed a by-law limiting the amount payable upon all existing policies of life insurance to $2000 and refused to accept premiums upon a larger basis. The plaintiff, who held a $5000 policy, sued the association for breach of contract. *Porter* v. *American Legion of Honor*, 183 Mass. 326. Here the time for performance on the part of the company of its express promise, *i. e.* to pay the beneficiary $5000 at the death of the insured, has not arrived, and by Massachusetts law no action lies for repudiation of the express contract.[6] But the defendant association has refused to accept, and the plaintiff therefore has not paid assessments at the rate called for by a $5000 policy. Accordingly on the express contract

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[1] *Cf.* Kingston *v.* Preston, Lofft 194.
[2] Poussard *v.* Spiers, 1 Q. B. D. 410; Cadwell *v.* Blake, 6 Gray (Mass.) 402.
[3] United States *v.* Behan, 110 U. S. 338, 346; Weed *v.* Burt, 78 N. Y. 191; Paige *v.* Barrett, 151 Mass. 67.
[4] Shales *v.* Seignoret, 1 Ld. Raym. 440.
[5] Laird *v.* Pim, 7 M. & W. 474.
[6] Daniels *v.* Newton, 114 Mass. 530.